

\*\*\*\*NOTE: Please review this language to ensure it is what you intend.

1           **SECTION 644.** 970.08 (2) of the statutes is created to read:

2           970.08 (2) A complaint is filed when the district attorney signs it and files it  
3 with the clerk of the court for the county where the crime was committed.

4           **SECTION 645.** 970.09 (2) of the statutes is created to read:

5           970.09 (2) The court may allow the district attorney to amend the complaint  
6 after the defendant enters a plea but within a reasonable time before trial if the  
7 amendment does not prejudice the defendant.

8           **SECTION 646.** 970.10 (title), (1) and (3) of the statutes are created to read:

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9           **970.10 (title) Dismissing the complaint.** (1) If the district attorney moves

10 to dismiss a complaint, the trial court shall grant the motion unless the court finds  
11 that any of the following is true:

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201-11

12 (a) Dismissal is contrary to the public interest.

13 (b) The defendant does not consent to the dismissal.

14           (3) Granting a motion made under sub. (1) dismisses the action, and the clerk  
15 shall enter an order to that effect.

16           **SECTION 647.** 970.13 (3) of the statutes is created to read:

17           970.13 (3) RELIEF FROM PREJUDICIAL JOINDER. Relief from prejudicial joinder  
18 may be sought under s. 971.68 (2).

19           **SECTION 648.** 970.14 (13) of the statutes is created to read:

20           970.14 (13) In an action where the state asserts jurisdiction under s. 939.03 (1)  
21 (b) or (c) and where the place of trial cannot readily be determined under this section,  
22 the trial may be in the county where the defendant intended that the crime be  
23 committed, the county of residence of the intended victims, or, if neither of these  
24 applies, Dane County.

1           **SECTION 649.** 970.15 of the statutes is created to read:

2           **970.15   Deferred and suspended prosecution agreements.   (1)**

3           **DEFINITIONS.** (a) "Deferred prosecution agreement" means an agreement under  
4           which a prosecutor does not file a criminal complaint but may do so in the future.

5           (b) "Suspended prosecution agreement" means an agreement under which  
6           further prosecution against a person is suspended after a prosecutor files a criminal  
7           complaint against the person.

8           **(2) DEFERRED PROSECUTION AGREEMENTS.** The same standards that apply to a  
9           district attorney's charging authority govern the district attorney's authority to  
10          enter into a deferred prosecution agreement. A deferred prosecution agreement is  
11          enforceable in the same manner as a plea agreement.

12          **(3) SUSPENDED PROSECUTION AGREEMENTS.** The same standards that apply to a  
13          court's authority to schedule cases and grant continuances apply to a court's  
14          authority to suspend prosecution when the parties have reached a suspended  
15          prosecution agreement. A suspended prosecution agreement is enforceable in the  
16          same manner as a plea agreement.

17          **(4) ADMISSIONS AND STATEMENTS.** Consent to, or participation in, a deferred  
18          prosecution agreement or a suspended prosecution agreement is not an admission  
19          of guilt and is not admissible in any trial relating to the charge to which the  
20          agreement pertains. No statement made by a person in connection with a deferred  
21          prosecution agreement or a suspended prosecution agreement is admissible in any  
22          trial relating to the charge to which the agreement pertains.

23          **(5) IMMUNITY.** Any organization, agency, or individual acting in good faith for  
24          which or for whom a person is assigned to work pursuant to a deferred prosecution  
25          agreement or a suspended prosecution agreement has immunity from any civil

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202-1

1 liability in excess of \$25,000 for acts or omissions by the person or affecting the  
2 person.

3 **SECTION 650.** Subchapter II (title) of chapter 970 [precedes s. 970.21 of the  
4 statutes] is created to read:

5 **CHAPTER 970**

6 **SUBCHAPTER II**

7 **PARTICULAR OFFENSES**

8 **SECTION 651.** Chapter 971 (title) of the statutes is repealed and recreated to  
9 read:

10 **CHAPTER 971**

11 **PRETRIAL PROCEDURES**

12 **SECTION 652.** 971.01 of the statutes is repealed.

13 **SECTION 653.** Subchapter I (title) of chapter 971 [precedes 971.015] of the  
14 statutes is created to read:

15 **CHAPTER 971**

16 **SUBCHAPTER I**

17 **COMMENCEMENT OF PROCEEDINGS**

18 **SECTION 654.** 971.015 (title) of the statutes is created to read:

19 **971.015 (title) Initial court appearance.**

20 **SECTION 655.** 971.015 (1) (title) of the statutes is created to read:

21 971.015 (1) (title) PERSONS IN CUSTODY.

22 **SECTION 656.** 971.015 (1) (b) of the statutes is created to read:

23 971.015 (1) (b) A person in custody outside the county in which the offense was  
24 alleged to have been committed shall have an initial appearance in the court for the

1 county in which the offense was alleged to have been committed as soon as  
2 practicable. Conditions of release may be set under s. 969.33.

3 **SECTION 657.** 971.015 (2) of the statutes is created to read:

4 971.015 (2) PERSONS NOT IN CUSTODY. A person who is arrested and released or  
5 who is issued a citation is entitled to an initial appearance within a reasonable time  
6 after being arrested or cited.

7 **SECTION 658.** 971.015 (4) of the statutes is created to read:

8 971.015 (4) DISCOVERY BEFORE THE INITIAL APPEARANCE. The district attorney  
9 may provide discovery before the initial appearance.

10 **SECTION 659.** 971.02 of the statutes is repealed.

11 **SECTION 660.** 971.027 (intro.) of the statutes is created to read:

12 **971.027 Duties at the initial appearance.** (intro.) All of the following shall  
13 occur at the initial appearance:

14 **SECTION 661.** 971.027 (2) and (4) of the statutes are created to read:

15 971.027 (2) PROBABLE CAUSE DETERMINATION. The court shall determine  
16 whether the facts alleged in the complaint establish probable cause to believe that  
17 the defendant committed the crime charged. If probable cause exists as to at least  
18 one count of the complaint, the court may set a date for further proceedings and, if  
19 the defendant requests, shall set a date for trial. Notwithstanding a finding of  
20 probable cause under this subsection, the defendant may move to dismiss a  
21 complaint or any count in a complaint based on lack of probable cause by filing a  
22 motion under s. 971.65.

23 (4) REQUEST FOR AND ENTRY OF PLEA. The court shall ask for the defendant's plea  
24 to the charges in the complaint. If the defendant stands mute or refuses to plead to

1 any charge, the court shall direct the entry of a plea of not guilty on the defendant's  
2 behalf.

3 **SECTION 662.** 971.035 of the statutes is created to read:

4 **971.035 Discovery at the initial appearance. (1) MATERIAL IN THE DISTRICT**  
5 **ATTORNEY'S POSSESSION.** At the initial appearance, the district attorney shall disclose,  
6 if in the district attorney's possession, law enforcement investigative reports relating  
7 to the case and a copy of the defendant's criminal record.

8 **(2) TIME OF DISCLOSURE.** Disclosure under this section shall be made after the  
9 defendant has obtained or waived legal representation.

10 **(3) MANNER OF DISCLOSURE.** Disclosure under this section shall be made in the  
11 manner provided in s. 971.51.

12 **(4) DELAY FOR GOOD CAUSE SHOWN.** For good cause shown, the court may allow  
13 a delay in disclosure under this section.

14 **SECTION 663.** 971.038 of the statutes is created to read:

15 **971.038 Time limits for motions and requests for substitution.** No later  
16 than 10 days after the initial appearance, the defendant may file any motions that  
17 might otherwise be waived by the entry of the plea or a request for substitution of  
18 a judge under s. 967.16.

19 **SECTION 664.** 971.04 (title) of the statutes is renumbered 967.13 (title).

20 **SECTION 665.** 971.04 (1) (intro.) of the statutes is renumbered 967.13 (1) (intro.)  
21 and amended to read:

22 967.13 (1) (intro.) Except as provided in subs. (2) and (3), the s. 967.14, or subch.  
23 III of ch. 885, a defendant who is an individual shall be present for all of the following:

24 **SECTION 666.** 971.04 (1) (a) of the statutes is repealed.

1           **SECTION 667.** 971.04 (1) (b), (c), (d), (e), (f), (g) and (h) of the statutes are  
2      renumbered 967.13 (1) (c), (d), (e), (f), (g), (h) and (j) and amended to read:

3           967.13 (1) (c) ~~At~~ The trial;

4           (d) ~~During~~ The voir dire of the trial jury;

5           (e) ~~At any~~ Any evidentiary hearing;

6           (f) ~~At any~~ Any view by the jury;

7           (g) ~~When the jury returns its~~ The return of the jury's verdict;

8           (h) ~~At the pronouncement~~ The granting of judgment ~~and the imposition of~~  
9      sentence;

10          (j) ~~At any~~ Any other proceeding when ordered by the court.

11          **SECTION 668.** 971.04 (2) of the statutes is renumbered 967.13 (2) and amended  
12      to read:

13          967.13 (2) A defendant charged with a misdemeanor may authorize his or her  
14      attorney in writing to act on ~~his or her~~ the defendant's behalf in any manner and,  
15      with prior leave of the court, and may be excused from ~~attendance at attending~~ any  
16      ~~or all proceedings proceeding except entry of a plea of guilty or no contest, sentencing,~~  
17      or a proceeding at which a right personal to the defendant is waived.

18          **SECTION 669.** 971.04 (3) of the statutes is renumbered 967.13 (3) and amended  
19      to read:

20          967.13 (3) If the defendant is present ~~at the beginning of the trial~~ when  
21      jeopardy attaches ~~and thereafter~~, during the progress of the trial or before the verdict  
22      of the jury has been returned into court, voluntarily absents himself or herself from  
23      the presence of the court without leave of the court, the trial or return of verdict of  
24      the jury in the case shall not thereby be postponed or delayed, ~~but~~ and the trial or  
25      submission of said the case to the jury for verdict and the return of verdict ~~thereon~~,

1 if required, shall proceed in all respects as though the defendant were present in  
2 court at all times. ~~A defendant need not be present at the pronouncement or entry~~  
3 ~~of an order granting or denying relief under s. 974.02, 974.06, or 974.07. If the~~  
4 ~~defendant is not present, the time for appeal from any order under ss. 974.02, 974.06,~~  
5 ~~and 974.07 shall commence after a copy has been served upon the attorney~~  
6 ~~representing the defendant, or upon the defendant if he or she appeared without~~  
7 ~~counsel. Service of such an order shall be complete upon mailing. A defendant~~  
8 ~~appearing without counsel shall supply the court with his or her current mailing~~  
9 ~~address. If the defendant fails to supply the court with a current and accurate~~  
10 ~~mailing address, failure to receive a copy of the order granting or denying relief shall~~  
11 ~~not be a ground for tolling the time in which an appeal must be taken.~~

\*\*\*\*NOTE: -3257/P2 and -4648/P1 both renumber 971.04 (3). The -3257/P2  
treatment is retained and the bill creates 974.08 (2) and (3).

12 **SECTION 670.** 971.05 of the statutes is repealed.

13 **SECTION 671.** Subchapter II (title) of chapter 971 [precedes 971.06] of the  
14 statutes is created to read:

15 **CHAPTER 971**

16 **SUBCHAPTER II**

17 **PLEAS**

18 **SECTION 672.** 971.06 (1) (title) of the statutes is created to read:

19 971.06 (1) (title) TYPES OF PLEAS.

20 **SECTION 673.** 971.06 (1) (a), (b) and (c) of the statutes are amended to read:

21 971.06 (1) (a) Guilty, which means that the defendant admits the facts  
22 necessary to constitute the crime.

1 (b) Not guilty, which means that the defendant denies the facts necessary to  
2 constitute the crime. A plea of not guilty requires the state to prove the facts  
3 necessary to constitute the crime beyond a reasonable doubt.

4 (c) No contest, subject to the approval of the court which means that the  
5 defendant does not contest the state's ability to prove the facts necessary to  
6 constitute the crime. The court may refuse to allow the entry of a no contest plea after  
7 consideration of the views of the parties and the public interest in the administration  
8 of justice.

9 **SECTION 674.** 971.06 (1) (d) of the statutes is repealed.

10 **SECTION 675.** 971.06 (2) of the statutes is repealed.

11 **SECTION 676.** 971.06 (3) of the statutes is repealed.

12 **SECTION 677.** 971.06 (4) of the statutes is created to read:

13 971.06 (4) JOINING A PLEA OF NOT GUILTY BY REASON OF MENTAL DISEASE OR DEFECT  
14 WITH ANOTHER PLEA. (a) A defendant may enter a plea of not guilty by reason of mental  
15 disease or defect, which means that at the time of the crime, as a result of mental  
16 disease or defect, the defendant lacked substantial capacity either to appreciate the  
17 wrongfulness of his or her conduct or to conform his or her conduct to the  
18 requirements of law. A defendant who enters a plea of not guilty by reason of mental  
19 disease or defect shall join the plea of not guilty by reason of mental disease or defect  
20 with one of the pleas under sub. (1).

21 (b) If a defendant joins a plea of not guilty by reason of mental disease or defect  
22 with a plea of not guilty, there shall be a separation of the trial of the issues of guilt  
23 and responsibility as provided in s. 975.52 (2) (a).

24 (c) If the defendant joins a plea of not guilty by reason of mental disease or  
25 defect with a plea of guilty or no contest, the court shall first determine whether to



1 accept the plea of guilty or no contest under s. 975.52 (1). If the plea of guilty or no  
2 contest is accepted, the court shall withhold entry of a judgment of conviction  
3 pending determination of the issue of responsibility, by the court or by a jury, under  
4 s. 975.52 (2). Judgment shall be entered as provided in s. 975.52 (4).

5 **SECTION 678.** 971.065 of the statutes is created to read:

6 **971.065 Plea agreements.** (1) The district attorney and the defendant may  
7 participate in discussions to reach an agreement that if the defendant enters a plea  
8 of guilty or no contest the district attorney shall take or refrain from taking certain  
9 actions, including one or more of the following:

10 (a) Moving to dismiss or amend one or more charges.

11 (b) Reading in any crime that is uncharged or that is dismissed as part of the  
12 agreement.

13 (c) Recommending, or agreeing not to oppose the defendant's request for, a  
14 particular disposition.

15 (d) Agreeing that a specific disposition is appropriate.

16 (2) The court may not participate in discussions to reach an agreement under  
17 this section.

18 **SECTION 679.** 971.07 of the statutes is repealed.

19 **SECTION 680.** 971.08 (title) of the statutes is amended to read:

20 **971.08 (title) Pleas Accepting pleas of guilty and or no contest;**  
21 **withdrawal thereof.**

22 **SECTION 681.** 971.08 (1) (a) of the statutes is renumbered 971.08 (1) (ar) and  
23 amended to read:

24 971.08 (1) (ar) Address the defendant personally and determine that the  
25 defendant is making the plea is made knowingly, voluntarily, and with

1 understanding of the meaning and effect of the plea, the nature of the charge crime  
2 to which the plea is entered, and the potential punishment if convicted.

3 **SECTION 682.** 971.08 (1) (ag) of the statutes is created to read:

4 971.08 (1) (ag) Require the parties to disclose any plea agreement in open court  
5 or, on a showing of good cause, in camera. Before accepting the plea, the court may  
6 express any reservations it has concerning the appropriateness of any recommended  
7 disposition and shall advise the defendant personally that the court is not bound by  
8 the terms of the plea agreement.

9 **SECTION 683.** 971.08 (1) (am) of the statutes is created to read:

10 971.08 (1) (am) Ask the defendant to state his or her plea on the record.

11 **SECTION 684.** 971.08 (1) (b) of the statutes is repealed and recreated to read:

12 971.08 (1) (b) Make an inquiry sufficient to satisfy the court that there is a  
13 factual basis for a judgment of conviction of the crime to which the plea is entered.

14 **SECTION 685.** 971.08 (1) (d) of the statutes is amended to read:

15 971.08 (1) (d) Inquire of the district attorney whether he or she has complied  
16 with s. 971.095 (2) and (3).

17 **SECTION 686.** 971.08 (3) of the statutes is repealed.

18 **SECTION 687.** 971.085 (title) and (1) (intro.) of the statutes are created to read:

19 **971.085 (title) Effect of a plea of guilty or no contest.** (1) (intro.) A plea  
20 of guilty or no contest waives all nonjurisdictional defects and defenses except that  
21 the following may be reviewed upon appeal from a judgment of conviction: *final order or judgment*

22 **SECTION 688.** 971.085 (1) (b) of the statutes is created to read:

23 971.085 (1) (b) An order denying a motion to dismiss asserting that the statute  
24 under which the defendant is charged violates the United States or the Wisconsin  
25 constitution.

1           **SECTION 689.** 971.085 (2) of the statutes is created to read:

2           971.085 (2) The court shall permit a defendant who prevails on an appeal of  
3 an order under sub. (1) (a) or (b) to withdraw his or her plea.

4           **SECTION 690.** 971.09 of the statutes is repealed and recreated to read:

5           **971.09 Consolidation; plea to or read-in of crimes committed in several**  
6 **counties.** (1) IN GENERAL. Consolidation refers to the process by which charges  
7 pending in more than one county are resolved in a single proceeding in one county.  
8 Consolidation is a voluntary procedure, requiring the consent of the defendant and  
9 the district attorneys for all counties whose charges are resolved. Consolidated  
10 charges shall be resolved by the entry of a plea of guilty or no contest or by an  
11 agreement that charged crimes be treated as read-in crimes. A defendant who has  
12 already been convicted of but not sentenced for a crime may apply for consolidation  
13 of any pending or uncharged crime committed.

14           (2) APPLICATION FOR CONSOLIDATION. A defendant may apply to the district  
15 attorney for a county in which a charge against the defendant is pending to resolve  
16 in a single proceeding in one county any pending cases. In the application, the  
17 defendant shall describe with particularity all the crimes that the defendant seeks  
18 to resolve in the single proceeding, indicate the county in which each of the crimes  
19 was committed, and indicate the county in which the defendant requests final  
20 disposition.

21           (3) NOTICE AND CONSENT. A district attorney who receives an application under  
22 sub. (2) shall send a copy of the application to the district attorney for each county  
23 in which a crime indicated in the application was committed. A district attorney who  
24 receives a copy of the application may execute a written consent to having any crime  
25 indicated in the application that is subject to disposition in his or her county resolved

1 in a proceeding in another county. If a district attorney does not consent to having  
2 a crime that is subject to disposition in his or her county resolved in another county,  
3 the crime may not be resolved under this section.

4 (4) AMENDING THE CHARGE; PLEA; READ-IN CRIMES. (a) If the district attorney to  
5 whom the defendant submitted the application under sub. (2) consents to resolving  
6 a case that is subject to disposition in his or her county in a single proceeding under  
7 this section, the district attorney shall file an amended complaint that charges the  
8 defendant with all crimes identified in consents executed under sub. (3) that are not  
9 to be treated as read-in crimes.

10 (b) To resolve crimes charged in the amended complaint under par. (a) in a  
11 single proceeding, the defendant shall waive in writing or on the record any right to  
12 be tried in the county in which a crime charged in the amended complaint was  
13 committed and enter a plea of guilty or no contest to each crime charged in the  
14 amended complaint.

15 (c) To resolve read-in crimes under this section, the defendant shall affirm his  
16 or her agreement to having the crimes considered at sentencing.

17 (d) A district attorney who executed a consent under sub. (3) need not be  
18 present when the defendant enters his or her plea but the district attorney's written  
19 consent shall be filed with the court.

20 (e) A charge that originated in a county may not be amended or dismissed  
21 without prior written approval of the district attorney for the county in which the  
22 charge originated.

23 (5) JUDGMENT. If it accepts the defendant's plea, the court shall enter judgment  
24 and sentence the defendant as though all crimes charged in the amended complaint  
25 were alleged to have been committed in the county where judgment is entered and

1 may consider at sentencing any read-in crimes affirmed under sub. (4) (c). The clerk  
2 of the court for the county in which judgment is entered shall file a copy of the  
3 judgment of conviction with the clerk of the court for each other county in which  
4 charges addressed in the judgment or treated as read-crimes originated. The  
5 district attorney for each of the other counties shall then move to dismiss any charges  
6 that are pending in his or her county against the defendant for charges addressed  
7 in the judgment or as treated as read-crimes.

8 (6) RIGHTS OF CRIME VICTIMS. The duties of the district attorney under ch. 950  
9 and s. 971.095 shall be discharged by the district attorney for the county in which the  
10 crimes occurred, unless otherwise agreed to by the participating district attorneys.

11 **SECTION 691.** 971.093 of the statutes is created to read:

12 **971.093 Withdrawal of a plea of guilty or no contest.** (1) BEFORE  
13 SENTENCING. The court shall grant a motion that is made before sentencing to  
14 withdraw a plea of guilty or no contest if a fair and just reason for doing so is  
15 established.

16 (2) AFTER SENTENCING. The court shall grant a motion that is made after  
17 sentencing to withdraw a plea of guilty or no contest if the defendant did not  
18 knowingly, voluntarily, and understandingly enter the plea or if withdrawal is  
19 required to prevent manifest injustice.

20 (3) REMEDY. When the court grants a motion to withdraw a plea of guilty or no  
21 contest under this section, the judgment of conviction is vacated, the original charge  
22 or charges reinstated, and the parties are restored to the position they were in before  
23 the plea and any related plea agreement was accepted.

24 **SECTION 692.** 971.095 (2) and (3) of the statutes are amended to read:

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971.095 (2) In any case in which a defendant has been charged with a crime, the district attorney shall, as soon as practicable, offer all of the victims in the case who have so requested ~~the opportunity~~ an opportunity to confer with the district attorney concerning the prosecution of the case and the possible outcomes of the prosecution, including potential plea agreements and sentencing recommendations. The duty to confer under this subsection does not limit the obligation of the district attorney to exercise his or her discretion concerning the handling of any criminal charge against the defendant.

(3) At the request of a victim, a district attorney shall make a reasonable attempt to provide the victim with notice of the date, time, and place of scheduled court proceedings ~~in a case involving~~ relating to the prosecution of a crime of which he or she is a victim and any changes in the date, time, or place of a scheduled court proceeding for which the victim has received notice. This subsection does not apply to a proceeding held before the initial appearance to set conditions of release under ch. 969.

**SECTION 693.** Subchapter III (title) of chapter 971 [precedes 971.098] of the statutes is created to read:

## CHAPTER 971

### SUBCHAPTER III

## SCHEDULING AND EXPEDITION OF PROCEEDINGS

**SECTION 694.** 971.098 of the statutes is created to read:

**971.098 Scheduling orders; pretrial conferences.** After the defendant enters a plea, the court may issue a scheduling order and may amend it as circumstances require. The order shall be in writing and may specify times for

1 discovery, pretrial motions, notices of intent to offer an alibi or another defense  
2 required to be disclosed, pretrial conferences, trial, or other proceedings.

3 **SECTION 695.** 971.10 (1) (title) of the statutes is created to read:

4 971.10 (1) (title) MISDEMEANORS.

5 **SECTION 696.** 971.10 (1) of the statutes is renumbered 971.10 (1) (a) and  
6 amended to read:

7 971.10 (1) (a) In Subject to sub. (3), the trial of a defendant who is in custody  
8 and is charged only with a misdemeanor actions trial shall commence within 60 45  
9 days from the date of the defendant's initial appearance in court.

10 **SECTION 697.** 971.10 (1) (b) of the statutes is created to read:

11 971.10 (1) (b) Subject to sub. (3), the trial of a defendant who is not in custody  
12 and is charged only with a misdemeanor shall commence within 60 days from the  
13 date on which any party demands a speedy trial in writing or on the record. A party  
14 who makes a demand in writing shall serve a copy upon the opposing party.

15 **SECTION 698.** 971.10 (2) (a) of the statutes is renumbered 971.10 (2) and  
16 amended to read:

17 971.10 (2) FELONIES. The Subject to sub. (3), the trial of a defendant who is  
18 charged with a felony shall commence within 90 days from the date trial is demanded  
19 by any party on which any party demands a speedy trial in writing or on the record.  
20 If the A party who makes a demand is made in writing, a copy shall be served serve  
21 a copy upon the opposing party. The demand may ~~not~~ be made ~~until~~ at any time after  
22 the filing of the ~~information~~ complaint or indictment.

23 **SECTION 699.** 971.10 (2) (b) of the statutes is renumbered 971.10 (2g) and  
24 amended to read:

1           971.10 (2g) ASSIGNMENT OF ANOTHER JUDGE. If the court is unable to schedule  
2 a timely trial pursuant to par. (a) under sub. (1) or (2), the court shall request  
3 assignment of another judge ~~pursuant to~~ under s. 751.03.

4           **SECTION 700.** 971.10 (2r) of the statutes is created to read:

5           971.10 (2r) INAPPLICABILITY TO DETAINERS. Subsections (1) to (2m) do not apply  
6 to inmates of a state prison.

7           **SECTION 701.** 971.10 (3) (title) of the statutes is created to read:

8           971.10 (3) (title) CONTINUANCES.

9           **SECTION 702.** 971.10 (3) (a) of the statutes is renumbered 971.10 (3) (a) (intro.)  
10 and amended to read:

11           971.10 (3) (a) (intro.) A court may grant a continuance in a case, upon its own  
12 motion or the motion of any party, if all of the following apply:

13           1. The ends of justice served by ~~taking action~~ a continuance outweigh the best  
14 interest of the public and the defendant in a speedy trial. ~~A continuance shall not~~  
15 ~~be granted under this paragraph unless the~~

16           2. The court sets forth, in on the record of the case, either orally or in writing,  
17 its reasons for finding that ~~the ends of justice served by the granting of the~~  
18 ~~continuance outweigh the best interests of the public and the defendant in a speedy~~  
19 ~~trial~~ subd. 1. applies.

20           **SECTION 703.** 971.10 (3) (b) (intro.), 1. and 2. of the statutes are amended to  
21 read:

22           971.10 (3) (b) (intro.) ~~The factors, among others, which the court shall~~  
23 ~~consider in~~ In determining whether to grant a continuance under par. (a) ~~are, the~~  
24 court shall consider at least the following factors:



1           1. Whether the failure to grant the a continuance ~~in the proceeding~~ would be  
2 likely to make ~~a continuation of the proceeding~~ it impossible to continue the  
3 proceeding or result in a miscarriage of justice.

4           2. Whether the case taken as a whole is so unusual and so complex, due to the  
5 number of defendants ~~or~~, the nature of the prosecution, or otherwise, that it is  
6 unreasonable to expect adequate preparation within the periods of time established  
7 by this section.

8           **SECTION 704.** 971.10 (3) (c) of the statutes is amended to read:

9           971.10 (3) (c) ~~No~~ A court may not grant a continuance under par. (a) ~~may be~~  
10 ~~granted~~ because of general congestion of the court's calendar ~~or~~, the state's lack of  
11 diligent preparation, or the state's failure to obtain available witnesses ~~on the part~~  
12 ~~of the state.~~

13           **SECTION 705.** 971.10 (4) of the statutes is renumbered 971.10 (2m) and  
14 amended to read:

15           971.10 (2m) REMEDY. Every If a defendant is not tried in accordance with on  
16 time under this section, the court shall be discharged release him or her from custody  
17 but the obligations of the bond or other and remove any monetary conditions of  
18 release of a defendant imposed as a result of the charge for which the time limit is  
19 exceeded. Nonmonetary conditions shall continue ~~until modified or until the bond~~  
20 ~~is released or the conditions removed~~ or may be imposed.

21           **SECTION 706.** 971.105 of the statutes is amended to read:

22           **971.105 Child victims and witnesses; duty to expedite proceedings.** In  
23 all criminal and delinquency cases, juvenile fact-finding hearings under s. 48.31 and  
24 juvenile dispositional hearings involving a child as a victim, as defined in s. 950.02  
25 (4), or as a witness, as defined in s. 950.02 (5), the court and the district attorney shall

1 take appropriate action to ensure a speedy trial in order to minimize the length of  
2 time the child must endure the stress of ~~the child's~~ his or her involvement in the  
3 proceeding. In ruling on any motion or other request for a delay or continuance of  
4 proceedings, the court shall consider and give weight to any adverse impact the delay  
5 or continuance may have on the well-being of a child victim or witness.

6 **SECTION 707.** 971.11 (1) of the statutes is amended to read:

7 971.11 (1) Whenever the warden or superintendent of a state prison receives  
8 notice of an untried criminal case pending in this state against an inmate of ~~a state~~  
9 the prison, the warden or superintendent shall, at the request of the inmate, send  
10 by certified mail a written request to the district attorney for prompt disposition of  
11 the case. The request shall state the sentence then being served, and the date of the  
12 inmate's parole eligibility, ~~if applicable, or the date of release on which the inmate~~  
13 will be released to extended supervision, ~~or the approximate discharge or conditional~~  
14 ~~release date, and prior decision relating to parole.~~ If there has been no preliminary  
15 ~~examination on the pending case, the request shall state whether the inmate waives~~  
16 ~~such examination, and, if so, shall be accompanied by a written waiver signed by the~~  
17 inmate date on which the inmate will be discharged. If the inmate is already eligible  
18 for parole, the request shall describe any prior decision relating to parole.

19 **SECTION 708.** 971.11 (2) and (3) of the statutes are consolidated, renumbered  
20 971.11 (2) and amended to read:

21 971.11 (2) If the crime charged in the pending case is a felony, the district  
22 attorney shall either move to dismiss the pending case or ~~arrange a date for~~  
23 ~~preliminary examination as soon as convenient and notify the warden or~~  
24 ~~superintendent of the prison thereof, unless such examination has already been held~~  
25 ~~or has been waived. After the preliminary examination or upon waiver thereof, the~~

1 ~~district attorney shall file an information, unless it has already been filed, and mail~~  
2 ~~a copy thereof to the warden or superintendent for service on the inmate. The district~~  
3 ~~attorney shall~~ bring the case on for trial within 120 days after receipt of receiving the  
4 request, subject to s. 971.10. ~~(3)~~ (3). If the crime charged in the pending case is a  
5 misdemeanor, the district attorney shall either move to dismiss the ~~charge case~~ or  
6 bring it on for trial within 90 days after receipt of the request.

7 **SECTION 709.** 971.11 (4) of the statutes is amended to read:

8 971.11 (4) If the defendant desires to plead guilty or no contest to the complaint  
9 ~~or to the information served upon him or her,~~ the defendant shall notify the district  
10 attorney ~~thereof~~. The district attorney shall thereupon arrange for the defendant's  
11 arraignment inmate to enter a plea as soon as possible ~~and the court may receive the~~  
12 ~~plea and pronounce judgment.~~

13 **SECTION 710.** 971.11 (5) of the statutes is amended to read:

14 971.11 (5) If the defendant wishes to plead guilty to cases pending in more than  
15 one county, the ~~several~~ district attorneys involved may agree with the defendant and  
16 among themselves for all such pleas to be received in the appropriate court of one of  
17 such counties, and s. 971.09 shall govern the procedure thereon so far as applicable.

18 **SECTION 711.** 971.11 (6) of the statutes is amended to read:

19 971.11 (6) The ~~prisoner shall be delivered~~ warden or superintendent of the  
20 prison shall deliver the inmate into the custody of the sheriff of the county in which  
21 the charge is pending for transportation to the court, and the ~~prisoner shall be~~  
22 ~~retained in that~~ sheriff shall retain custody of the inmate during all proceedings  
23 under this section. The sheriff shall return the ~~prisoner inmate~~ to the prison upon  
24 the completion of the proceedings and during any adjournments or continuances ~~and~~  
25 ~~between the preliminary examination and the trial,~~ except that, if the department

1 ~~of corrections~~ certifies a jail as being suitable to detain the ~~prisoner inmate~~, he or she  
2 may be detained there until the court disposes of the case. The ~~prisoner's inmate's~~  
3 existing sentence continues to run and he or she receives time credit under s. 302.11  
4 while in custody.

5 **SECTION 712.** 971.11 (7) of the statutes is amended to read:

6 971.11 (7) If the district attorney moves to dismiss any pending case ~~or if it is~~  
7 ~~not brought on for trial to which a request under sub. (1) relates or does not bring the~~  
8 ~~case on for trial~~ within the time specified in sub. (2) ~~or (3)~~, the case ~~court~~ shall be  
9 ~~dismissed~~ dismiss the case unless the defendant has escaped or otherwise prevented  
10 the trial, in which case the request for disposition of the case shall be deemed  
11 withdrawn and of no further legal effect. ~~Nothing in this section prevents a trial after~~  
12 ~~the period specified in sub. (2) or (3) if a trial commenced within such period~~  
13 ~~terminates in a mistrial or a new trial is granted.~~

14 **SECTION 713.** 971.12 (title) of the statutes is renumbered 970.13 (title).

15 **SECTION 714.** 971.12 (1) and (2) of the statutes are renumbered 970.13 (1)  
16 (intro.) and (2) and amended to read:

17 970.13 (1) JOINDER OF CRIMES. (intro.) Two or more crimes may be charged in  
18 the same complaint, ~~information or indictment in a separate count for each crime if~~  
19 ~~the crimes charged, whether felonies or misdemeanors, or both, if each is described~~  
20 in a separate count and if any of the following applies:

21 (a) The crimes are of the same or similar character ~~or~~,

22 (b) The crimes are based on the same act or transaction ~~or on 2~~,

23 (c) The crimes are based on 2 or more acts or transactions connected together  
24 or constituting parts of a common scheme or plan. ~~When a misdemeanor is joined~~  
25 ~~with a felony, the trial shall be in the court with jurisdiction to try the felony.~~

1           **(2) JOINDER OF DEFENDANTS.** Two or more defendants may be charged in the  
2 same complaint,~~information or indictment~~ if they are alleged to have participated  
3 in the same act or transaction or in the same series of acts or transactions  
4 constituting one or more crimes. Such defendants may be charged in one or more  
5 counts together or separately ~~and all of the defendants need not be charged in each~~  
6 ~~count.~~

7           **SECTION 715.** 971.12 (3) of the statutes is renumbered 971.68 (2) and amended  
8 to read:

9           **971.68 (2) RELIEF FROM PREJUDICIAL JOINDER.** If it appears that a defendant or  
10 the state is prejudiced by a joinder of crimes or of defendants ~~in a complaint,~~  
11 ~~information or indictment or by such joinder for trial together,~~ the court may order  
12 separate trials of counts, grant a severance of charges or defendants or provide  
13 whatever other relief justice requires. ~~The district attorney shall advise the court~~  
14 ~~prior to trial if the district attorney intends to use the statement of a codefendant~~  
15 ~~which implicates another defendant in the crime charged. Thereupon, the judge~~  
16 ~~shall grant a severance as to any such defendant.~~

17           **SECTION 716.** 971.12 (4) of the statutes is renumbered 971.67 and amended to  
18 read:

19           **971.67 ~~Trial together~~ Joint trial of separate charges.** The court may order  
20 2 or more complaints,~~informations~~ or indictments to be tried together if the crimes  
21 and the defendants, if there is more than one, could have been joined in a single  
22 complaint,~~information~~ or indictment. The procedure shall be the same as if the  
23 prosecution were under such single complaint,~~information~~ or indictment.

24           **SECTION 717.** 971.13 of the statutes is renumbered 975.30, and 975.30 (3) and  
25 (4), as renumbered, are amended to read:

## SECTION 717

971.65

1 975.30 (3) The fact that a defendant is not competent to proceed does not  
2 preclude any legal objection to the prosecution under s. 971.31 which the court from  
3 proceeding on any pretrial motion that is susceptible of to fair determination prior  
4 to trial and without the personal participation of the defendant.

5 (4) The fact that a defendant is not competent to proceed does not preclude a  
6 hearing under s. ~~968.38~~ 968.725 (4) or (5) unless the court cannot fairly make the  
7 probable cause finding required to be made at the hearing cannot be fairly made  
8 under s. 968.725 (4) or (5), whichever is applicable, without the personal  
9 participation of the defendant.

\*\*\*NOTE: This section reconciles -0228/P2 and -4635/P1.

SECTION 718. 971.14 (title) of the statutes is repealed.

SECTION 719. 971.14 (1g) of the statutes is repealed.

SECTION 720. 971.14 (1r) (title) of the statutes is repealed.

SECTION 721. 971.14 (1r) (a) of the statutes is renumbered 975.31 (1).

SECTION 722. 971.14 (1r) (b) of the statutes is renumbered 975.31 (3) and  
amended to read:

975.31 (3) If reason to doubt a defendant's competency to proceed arises after  
the defendant has been bound over for trial after a preliminary examination, or after  
a finding of guilty has been rendered by the jury or made by the court, a guilt, no  
probable cause ~~determination shall not be~~ finding is required and the court shall  
proceed order an examination of the defendant under sub. (2) s. 975.32.

SECTION 723. 971.14 (1r) (c) of the statutes is repealed.

SECTION 724. 971.14 (2) (title) of the statutes is repealed.

SECTION 725. 971.14 (2) (a) of the statutes is renumbered 975.32 (1) and  
amended to read:

1           975.32 (1) If an examination of a defendant is required under s. 975.31, the  
2 court shall order an examination into competency. The court shall may order the  
3 department to conduct the examination or may appoint one or more examiners  
4 having the specialized knowledge determined by the court to be appropriate to  
5 examine and report upon the condition of the defendant. ~~If an inpatient examination~~  
6 ~~is determined by the court to be necessary, the defendant may be committed to a~~  
7 ~~suitable mental health facility for the examination period specified in par. (c), which~~  
8 ~~shall be deemed days spent in custody under s. 973.155. If the examination is to be~~  
9 ~~conducted by the department, the court shall order the individual to the facility~~  
10 ~~designated by the department~~ the court orders the department to conduct an  
11 examination, the department may select the examiner.

12           **SECTION 726.** 971.14 (2) (am) of the statutes is repealed.

13           **SECTION 727.** 971.14 (2) (b) of the statutes is renumbered 975.32 (3) and  
14 amended to read:

15           975.32 (3) If the defendant has been released ~~on bail~~ from custody, the court  
16 shall order an outpatient examination, except that the court may not order an  
17 ~~involuntary inpatient examination unless if the defendant consents to an inpatient~~  
18 examination, the defendant fails to cooperate in the an outpatient examination, or  
19 the examiner informs the court that inpatient observation is necessary for an  
20 adequate examination.

21           **SECTION 728.** 971.14 (2) (c) of the statutes is renumbered 975.32 (6) (a) and  
22 amended to read:

23           975.32 (6) (a) ~~Inpatient examinations shall be completed and the report of~~  
24 ~~examination filed~~ An examiner ordered to conduct an inpatient examination under  
25 this section shall complete the examination and file a report of the examination

1 within 15 days after the examination is ordered or ~~as specified in par. (am),~~  
2 ~~whichever is applicable, unless, for good cause, the facility or examiner appointed by~~  
3 ~~the court cannot complete the examination within this period and requests an~~  
4 ~~extension. In that case, if the department is the examiner, within 15 days after the~~  
5 ~~defendant arrives at the inpatient facility. If the examiner cannot complete the~~  
6 ~~examination within 15 days and requests an extension, the court may for good cause~~  
7 allow one 15-day extension of the examination period. Outpatient examinations  
8 shall be completed and the report of examination filed

9 (b) An examiner ordered to conduct an outpatient examination under this  
10 section shall complete the examination and file a report of the examination within  
11 30 days after the examination is ordered.

12 **SECTION 729.** 971.14 (2) (d) of the statutes is renumbered 975.32 (5) and  
13 amended to read:

14 975.32 (5) ~~If the court orders that the examination be conducted on an inpatient~~  
15 basis a defendant in custody is subject to an inpatient examination ordered under  
16 this section, the sheriff of the county in which the court that ordered the examination  
17 is located shall transport any the defendant not free on bail to the examining facility  
18 where the examination will take place within a reasonable time after the  
19 examination is ordered and shall transport return the defendant to the jail within  
20 a reasonable time after the examination is completed. The examining facility shall  
21 notify the sheriff and county the department of community programs of for the  
22 county in which the court is located receive notice from the examining facility that  
23 when the examination has been is completed.

24 **SECTION 730.** 971.14 (2) (e) of the statutes is renumbered 975.32 (8) and  
25 amended to read:



1           975.32 (8) The An examiner shall personally observe and examine the  
2       defendant and shall have access to ~~his or her~~ the defendant's past ~~or~~ and present  
3       treatment records, as defined under s. 51.30 (1) (b).

4           **SECTION 731.** 971.14 (2) (f) of the statutes is renumbered 975.32 (9).

5           **SECTION 732.** 971.14 (2) (g) of the statutes is renumbered 975.32 (11) and  
6       amended to read:

7           975.32 (11) The defendant also may be examined for competency purposes at  
8       any stage of the competency proceedings by ~~physicians or other~~ experts designated  
9       by the court or chosen by the defendant or by the district attorney, who shall be  
10      permitted reasonable access to the defendant for purposes of the examination. Any  
11      party who intends to call an expert designated or chosen under this subsection as a  
12      witness shall furnish a copy of the expert's report to the opposing party within a  
13      reasonable period of time.

14          **SECTION 733.** 971.14 (3) (intro.) of the statutes is renumbered 975.33 (1) (intro.)  
15      and amended to read:

16           975.33 (1) REPORT CONTENTS. (intro.) The ~~examiner shall submit to the court~~ <sup>no strike</sup>  
17      <sup>Each report - appointed</sup> ~~a written~~ <sup>(A)</sup> report which ~~required under s. 975.32 (6) shall include~~ <sup>that includes</sup> all of the  
18      following:

19          **SECTION 734.** 971.14 (3) (a) and (b) of the statutes are renumbered 975.33 (1)  
20      (a) and (b).

21          **SECTION 735.** 971.14 (3) (c) of the statutes is renumbered 975.33 (1) (c) and  
22      amended to read:

23           975.33 (1) (c) The examiner's opinion regarding the defendant's present mental  
24      capacity to understand the criminal proceedings and assist in his or her defense.

1           **SECTION 736.** 971.14 (3) (d) of the statutes is renumbered 975.33 (1) (d) (intro.)  
2 and amended to read:

3           975.33 (1) (d) (intro.) If the examiner reports that the defendant lacks  
4 competency, the is not competent to proceed, all of the following:

5           1. The examiner's opinion regarding the likelihood that the defendant, if  
6 provided treatment, may be restored to competency become competent within the  
7 time maximum period permitted under sub. (5) (a). The examiner shall provide an  
8 of commitment, as defined in s. 975.34 (6) (a).

9           2. The examiner's opinion as to whether the defendant's treatment should  
10 occur be provided in an inpatient facility designated by the department, in a  
11 community-based treatment program under the supervision of the department, or  
12 in a jail or a locked unit of a facility that has entered into a voluntary agreement with  
13 the state to serve as a location for treatment.



\*\*\*\*NOTE: Please review this provision. I incorporated Act 214 into your draft.

14           **SECTION 737.** 971.14 (3) (dm) (intro.) of the statutes is renumbered 975.33 (1)  
15 (e) and amended to read:

16           975.33 (1) (e) If sufficient information is available to the examiner to reach an  
17 opinion, the examiner's opinion on whether the defendant needs medication or  
18 treatment and whether the defendant is not competent to refuse medication or  
19 treatment. ~~The defendant is not competent to refuse medication or treatment if,~~  
20 ~~because of mental illness, developmental disability, alcoholism or drug dependence,~~  
21 ~~and after the advantages and disadvantages of and alternatives to accepting the~~  
22 ~~particular medication or treatment have been explained to the defendant, one of the~~  
23 ~~following is true:~~

24           **SECTION 738.** 971.14 (3) (dm) 1. and 2. of the statutes are repealed.

1           **SECTION 739.** 971.14 (3) (e) of the statutes is renumbered 975.33 (1) (g) and  
2 amended to read:

3           975.33 (1) (g) The facts and reasoning, in reasonable detail, upon which the  
4 required findings and opinions ~~under pars. (b) to (dm)~~ are based.

5           **SECTION 740.** 971.14 (4) (title) of the statutes is repealed.

6           **SECTION 741.** 971.14 (4) (a) of the statutes is renumbered 975.33 (2) and  
7 amended to read:

8           975.33 (2) DISCLOSURE. The court shall cause copies of the examiner's report  
9 to be delivered ~~forthwith~~ immediately to the district attorney and the defense  
10 ~~counsel, to the defendant's attorney~~ or the defendant personally if not represented  
11 by counsel. Upon the request of the sheriff or jailer charged with care and control  
12 of the jail in which the defendant is being held pending or during a trial or sentencing  
13 proceeding, the court shall cause a copy of the report to be delivered to the sheriff or  
14 jailer. The sheriff or jailer may provide a copy of the report to the person who is  
15 responsible for maintaining medical records for inmates of the jail, or to a nurse  
16 licensed under ch. 441, or to a physician or physician assistant licensed under subch.  
17 II of ch. 448 who is a health care provider for the defendant or who is responsible for  
18 providing health care services to inmates of the jail. The report shall not be otherwise  
19 disclosed ~~prior to~~ before the hearing under ~~this subsection~~ s. 975.34.

20           **SECTION 742.** 971.14 (4) (b) of the statutes is repealed.

21           **SECTION 743.** 971.14 (4) (c) of the statutes is repealed.

22           **SECTION 744.** 971.14 (4) (d) of the statutes is repealed.

23           **SECTION 745.** 971.14 (5) (title) of the statutes is repealed.

24           **SECTION 746.** 971.14 (5) (a) 1., 2. and 3. of the statutes are renumbered 975.34

25 (7) (a), (b) and (c) and amended to read:

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227-20

1        975.34 (7) (a) ~~If the court determines that the defendant is not competent but~~  
2 ~~is likely to become competent within the period specified in this paragraph if~~  
3 ~~provided with appropriate treatment sub. (6) (b) 3. applies,~~ the court shall suspend  
4 ~~the proceedings and~~ commit the defendant to the custody of the department for  
5 treatment for a period not to exceed ~~12 months, or the maximum sentence specified~~  
6 ~~for the most serious offense with which the defendant is charged, whichever is less~~  
7 the maximum period of commitment, as defined in sub. (6) (a). The department shall  
8 determine whether the defendant will receive treatment in an appropriate  
9 institution designated by the department, while under the supervision of the  
10 department in a community-based treatment program under contract with the  
11 department, or in a jail or a locked unit of a facility that has entered into a voluntary  
12 agreement with the state to serve as a location for treatment. The sheriff shall  
13 transport the defendant to the institution, program, jail, or facility, as determined  
14 by the department.

15        (b) If, under ~~subd. 1, par. (a),~~ the department commences ~~services~~ treatment  
16 to a defendant in jail or in a locked unit, the department shall, as soon as possible,  
17 transfer the defendant to an institution or provide ~~services~~ treatment to the  
18 defendant in a community-based treatment program consistent with this  
19 subsection. The court shall order a defendant who is committed under this  
20 subsection to undergo periodic reexaminations as provided in s. 975.36.

21        (c) Days spent in commitment under this ~~paragraph~~ subsection are considered  
22 days spent in custody under s. 973.155. The court shall make and enter a specific  
23 finding of the number of days spent in custody and include that finding in the  
24 commitment order.

\*\*\*\*NOTE: Please review this SECTION and SECTION 747. I incorporated Act 214 into your draft and these SECTIONS are the result.

**SECTION 747.** 971.14 (5) (a) 4. of the statutes is renumbered 975.34 (7) (d) and amended to read:

975.34 (7) (d) A defendant under the supervision of the department placed under this ~~paragraph~~ subsection in a community-based treatment program is in the custody and control of the department, subject to any conditions set by the department. If the department believes that the defendant under supervision has violated a condition, or that permitting the defendant to remain in the community jeopardizes the safety of the defendant or another person, the department may designate an institution at which the treatment shall occur and may request that the court reinstate the proceedings, order the defendant transported by the sheriff to the designated institution, and ~~suspend proceedings~~ commit the defendant to custody consistent with ~~subd. 1.~~ par. (a).

**SECTION 748.** 971.14 (5) (am) of the statutes is renumbered 975.35 and amended to read:

**975.35 Post-commitment motion on capacity to refuse medication or treatment.** If ~~the a~~ defendant committed under s. 975.34 (7) is not subject to a court order ~~determining finding~~ the defendant ~~to be~~ not competent to refuse medication or treatment ~~for the defendant's mental condition~~ and if the department determines that the defendant should be subject to such a court order, the department may file a motion with the court, ~~with notice to the counsel for the defendant, the defendant, and the district attorney, a motion for a hearing, under the standard specified in sub.~~ (3) (dm), on to determine whether the defendant is not competent to refuse medication or treatment. ~~A report on which the motion is based shall accompany~~

1 ~~the motion and notice of motion and shall include a statement~~ The department shall  
2 submit with the motion a report that is based on an examination of the defendant by  
3 a licensed physician, that is signed by a licensed physician, and that asserts that the  
4 defendant needs medication or treatment and that the defendant is not competent  
5 to refuse medication or treatment, based on an examination of the defendant by a  
6 licensed physician. The department shall provide notice of any motion filed under  
7 this section, and a copy of the report submitted with the motion, to the defendant,  
8 the defendant's attorney, and the district attorney. Within 10 days after the  
9 department files a motion is filed under this paragraph section, the court shall, under  
10 the procedures and standards specified in sub. (4) (b), hold a hearing without a jury  
11 to determine whether the defendant's competency defendant is not competent to  
12 refuse medication or treatment for the defendant's mental condition. At the hearing,  
13 the department must prove by clear and convincing evidence that the defendant is  
14 not competent to refuse medication or treatment. At the request of the defendant,  
15 the defendant's counsel attorney, or the district attorney, the hearing may be  
16 postponed, but in no case may the postponed hearing be held more than 20 days after  
17 a motion is filed under this paragraph section.

\* \*\*\*\*NOTE: Please review this SECTION and SECTION 749. I incorporated Act 214 into your draft.

18 **SECTION 749.** 971.14 (5) (b) of the statutes is renumbered 975.36 (1) and  
19 amended to read:

20 975.36 (1) REEXAMINATION TIME LIMITS. ~~The defendant~~ department shall be  
21 periodically reexamined by the department examiners. ~~Written reports of~~  
22 ~~examination shall be furnished to the court~~ reexamine a defendant who remains  
23 committed under s. 975.34 (7), and at 3 months after commitment, 6 months after

1 ~~commitment, and 9 months after commitment and within 30 days prior to before the~~  
2 ~~expiration of the commitment. Each order shall submit a written report to the court~~  
3 ~~on the defendant's mental condition. In each report, the department shall indicate~~  
4 ~~either that whether the defendant has become competent, that the defendant~~  
5 ~~remains incompetent but that attainment of competency to proceed and, if the~~  
6 ~~defendant has not become competent, whether the defendant is likely to become~~  
7 ~~competent within the remaining commitment period, or that the defendant has not~~  
8 ~~made such progress that attainment of competency is likely within the remaining~~  
9 ~~commitment period. Any report indicating such a lack of sufficient progress shall~~  
10 ~~include the examiner's opinion regarding whether the defendant is mentally ill,~~  
11 ~~alcoholic, drug dependent, developmentally disabled or infirm because of aging or~~  
12 ~~other like incapacities. If the defendant is not likely to become competent within the~~  
13 ~~remaining commitment period, the department shall also report whether the~~  
14 ~~defendant meets the criteria for commitment under ch. 51 or 55. The court shall~~  
15 ~~schedule a date certain for the review of the reports. If the department indicates in~~  
16 ~~the report that the defendant has become competent or that the defendant is not~~  
17 ~~competent and is unlikely to become competent within the remaining commitment~~  
18 ~~period, the court shall hold the review within 14 days after the court receives the~~  
19 ~~report.~~

20 **SECTION 750.** 971.14 (5) (c) of the statutes is renumbered 975.36 (3) and  
21 amended to read:

22 975.36 (3) DETERMINING COMPETENCY. Upon receiving a report under par. (b)  
23 ~~indicating the defendant has regained competency or is not competent and unlikely~~  
24 ~~to become competent in the remaining commitment period, the court shall hold a~~  
25 ~~hearing within 14 days of receipt of the report and sub. (1) or (2), the court shall~~

1 proceed under ~~sub. (4) s. 975.34~~. If the court determines that the defendant has  
2 become competent, the defendant shall be discharged from commitment and the  
3 criminal proceeding shall be resumed. If the court determines that the defendant is  
4 making sufficient progress toward becoming competent, the commitment shall  
5 continue.

6 **SECTION 751.** 971.14 (5) (d) of the statutes is renumbered 975.36 (5) and  
7 amended to read:

8 975.36 (5) MEDICATION TO MAINTAIN COMPETENCY. If the defendant is receiving  
9 medication, the court may make appropriate orders for the continued administration  
10 of the medication in order to maintain the competence of the defendant for the  
11 duration of the proceedings.

12 (6) SUBSEQUENT INCOMPETENCY. If a defendant who has been restored to  
13 competency thereafter again becomes incompetent, the maximum commitment  
14 period under ~~par. (a) s. 975.34 (6)~~ shall be 18 months minus the days spent in previous  
15 commitments under ~~this subsection s. 975.34~~, or 12 months, whichever is less.

16 **SECTION 752.** 971.14 (6) (title) of the statutes is repealed.

17 **SECTION 753.** 971.14 (6) (a) of the statutes is repealed.

18 **SECTION 754.** 971.14 (6) (b) of the statutes is renumbered 975.38 (1) and  
19 amended to read:

20 975.38 (1) When the court finds under s. 975.34 (6) (b) 1. that a defendant is  
21 not likely to become competent, or discharges a defendant from commitment under  
22 ~~par. (a) s. 975.36 (4)~~, it may order that the defendant be taken immediately into  
23 custody by a law enforcement official and promptly delivered to a facility specified  
24 in s. 51.15 (2), an approved public treatment facility under s. 51.45 (2) (c), or an  
25 appropriate medical or protective placement facility. Thereafter, detention of the



1 defendant shall be governed by s. 51.15, 51.45 (11), or 55.135, as appropriate. The  
2 district attorney or corporation counsel may prepare a statement ~~meeting that~~  
3 satisfies the requirements of s. 51.15 (4) or (5), 51.45 (13) (a), or 55.135 based on the  
4 allegations of the criminal complaint and the evidence in the case. ~~This statement~~  
5 ~~shall be given~~ If an attorney prepares such a statement, he or she shall provide a copy  
6 of the statement to the director of the facility to which the defendant is delivered and  
7 filed file the statement with the branch of ~~circuit~~ court assigned to exercise criminal  
8 jurisdiction in the county in which the criminal charges are pending, ~~where it shall.~~  
9 The filed statement shall suffice, without corroboration by other petitioners, as a  
10 petition for commitment under s. 51.20 or 51.45 (13) or a petition for protective  
11 placement under s. 55.075. ~~This section~~ subsection does not restrict the power of the  
12 branch of ~~circuit~~ court in which the ~~petition~~ statement is filed to transfer the matter  
13 to the branch of ~~circuit~~ court assigned to exercise jurisdiction under ch. 51 in the  
14 county. Days spent in commitment or protective placement pursuant to a petition  
15 under this ~~paragraph shall not be deemed~~ subsection do not count as days spent in  
16 custody under s. 973.155.

17 **SECTION 755.** 971.14 (6) (c) of the statutes is renumbered 975.38 (2) and  
18 amended to read:

19 975.38 (2) If a ~~person~~ defendant is committed under s. 51.20 pursuant to a  
20 petition under ~~par. (b)~~ sub. (1), the county department under s. 51.42 or 51.437 to  
21 whose care and custody the ~~person~~ defendant is committed shall notify the court  
22 ~~which that released the defendant under s. 975.34 (6) (b) 1. or discharged the person~~  
23 defendant under ~~par. (a)~~ s. 975.36 (4), the district attorney for the county in which  
24 that court is located, and the ~~person's~~ defendant's attorney of record in the ~~prior~~  
25 suspended criminal proceeding at least 14 days ~~prior to~~ before transferring or

1 discharging the defendant from an inpatient treatment facility and at least 14 days  
2 ~~prior to~~ before the expiration of the order of commitment or any subsequent  
3 consecutive order, unless the ~~department or county department or the department~~  
4 ~~of health services~~ has applied for an extension of the order.

5 **SECTION 756.** 971.14 (6) (d) of the statutes is renumbered 975.38 (3) and  
6 amended to read:

7 975.38 (3) Counsel who ~~have received~~ receive notice under ~~par. (c)~~ sub. (2) or  
8 who otherwise obtain information that a defendant released under s. 975.34 (6) (b)  
9 1. or discharged under par. (a) s. 975.36 (4) may have become competent to proceed  
10 in a criminal case may move the court to order that the defendant undergo a  
11 competency examination under ~~sub. (2)~~ s. 975.32. If the court ~~so orders~~, a report shall  
12 ~~be filed under sub. (3) and a hearing held under sub. (4)~~ orders an examination under  
13 s. 975.32, the examiner shall file a report under s. 975.33 and the court shall proceed  
14 under s. 975.34. If the court determines that the defendant is competent to proceed,  
15 the court shall resume the criminal proceeding ~~shall be resumed~~. If the court  
16 determines that the defendant is not competent to proceed, it shall release ~~him or her~~  
17 the defendant but may impose such reasonable nonmonetary conditions ~~as will on~~  
18 the defendant to protect the public and enable the court and district attorney to  
19 discover whether the ~~person~~ defendant subsequently becomes competent.

20 **SECTION 757.** 971.15 of the statutes is renumbered 975.50, and 975.50 (2), as  
21 renumbered, is amended to read:

22 975.50 (2) As used in this chapter, the ~~terms~~ term "mental disease or defect"  
23 ~~do~~ does not include an abnormality manifested only by repeated criminal or  
24 otherwise antisocial conduct.

25 **SECTION 758.** 971.16 (title) of the statutes is renumbered 975.51 (title).

1           **SECTION 759.** 971.16 (1) of the statutes is repealed.

2           **SECTION 760.** 971.16 (2) of the statutes is renumbered 975.51 (1) and amended  
3 to read:

4           975.51 (1) If ~~the a~~ defendant ~~has entered~~ enters a plea of not guilty by reason  
5 of mental disease or defect or there is other reason to believe that the defendant has  
6 a mental disease or defect of the defendant will otherwise that will become an issue  
7 in the case, the court may appoint at least one ~~physician or at least one psychologist,~~  
8 but and not more than 3 physicians or psychologists or a combination thereof, to  
9 examine the defendant and to testify at the trial. If the court appoints a physician  
10 or psychologist under this section, the court shall inform the jury, if there is one, that  
11 the court appointed the physician or psychologist and shall permit both parties to  
12 cross-examine the physician or psychologist.

13           **(2)(a)** The compensation of the physicians or psychologists shall be fixed by the  
14 court and paid by court shall set the fee for an examination conducted by a physician  
15 or psychologist appointed under sub. (1) and the county, upon the order of the court,  
16 shall pay the fee as part of the costs of the action. ~~The receipt by any~~

17           **(b)** ~~A physician or psychologist summoned under this section of any other~~  
18 ~~compensation than that so fixed by the court and paid by the county, or the offer or~~  
19 ~~promise by any person to pay such other compensation, is unlawful and may not~~  
20 accept compensation other than the fee under par. (a), for conducting an examination  
21 under sub. (1) and no person may offer or promise to pay the physician or psychologist  
22 other compensation for the examination. Violation of this paragraph is punishable  
23 as contempt of court. The fact that the physician or psychologist has been appointed  
24 by the court shall be made known to the jury and the physician or psychologist shall  
25 be subject to cross-examination by both parties.

1       **SECTION 761.** 971.16 (3) (intro.) of the statutes is renumbered 975.51 (3) and  
2 amended to read:

3       975.51 (3) Not less than 10 days before trial, or at ~~any other time that the court~~  
4 ~~directs a different time if directed by the court~~, any physician or psychologist  
5 appointed under sub. (2) (1) shall file a written report of his or her examination of  
6 the defendant with the judge, ~~who court, and the court~~ shall cause copies of the report  
7 to be transmitted to the district attorney and to ~~counsel for the defendant~~. ~~The~~  
8 ~~contents of the report shall be confidential until the physician or psychologist has~~  
9 ~~testified or at the completion of the trial~~ the defendant's attorney. The report shall  
10 contain ~~an~~ the physician's or psychologist's opinion regarding the ability of the  
11 defendant to appreciate the wrongfulness of the defendant's conduct or to conform  
12 the defendant's conduct with the requirements of law at the time of the commission  
13 of the criminal offense charged and, if sufficient information is available to the  
14 physician or psychologist to reach an opinion, his or her opinion on whether the  
15 defendant needs medication or treatment and whether the defendant is not  
16 competent to refuse medication or treatment. ~~The defendant is not competent to~~  
17 ~~refuse medication or treatment if, because of mental illness, developmental~~  
18 ~~disability, alcoholism or drug dependence, and after the advantages and~~  
19 ~~disadvantages of and alternatives to accepting the particular medication or~~  
20 ~~treatment have been explained to the defendant, one of the following is true:~~ contents  
21 of the report shall be confidential until the physician or psychologist has testified or  
22 until the completion of the trial.

23       **SECTION 762.** 971.16 (3) (a) of the statutes is repealed.

24       **SECTION 763.** 971.16 (3) (b) of the statutes is repealed.

1       **SECTION 764.** 971.16 (4) of the statutes is renumbered 975.51 (4) (a) and  
2 amended to read:

3       975.51 (4) (a) If the defendant wishes to be examined by a physician,  
4 psychologist, or other expert of his or her own choice, the examiner shall be permitted  
5 to have reasonable access to the defendant for the purposes of examination. No  
6 testimony An examiner selected by the defendant may not testify at trial regarding  
7 the mental condition of the defendant ~~shall be received from a physician,~~  
8 ~~psychologist or expert witness summoned by the defendant unless not less than the~~  
9 examiner provides a report of his or her examination of the defendant to the district  
10 attorney at least 15 days before trial ~~a report of the examination has been~~  
11 ~~transmitted to the district attorney and unless the prosecution state has been~~  
12 afforded an opportunity, if it requests one within a reasonable time before trial, to  
13 examine and observe the defendant ~~if the opportunity has been seasonably~~  
14 ~~demande~~d. The state may summon a physician, psychologist or other expert to  
15 testify, but that witness shall not give testimony unless not less than 15 days before  
16 trial a written report of his or her examination of the defendant has been transmitted  
17 to counsel for the defendant.

18       **SECTION 765.** 971.16 (5) of the statutes is renumbered 975.51 (5) (a) and  
19 amended to read:

20       975.51 (5) (a) If Except as provided in par. (b), if a physician, psychologist, or  
21 other expert who has examined the defendant testifies ~~concerning~~ regarding the  
22 defendant's mental condition, he or she shall be permitted to make a statement as  
23 to the nature of his or her examination, his or her diagnosis of the mental condition  
24 of the defendant at the time of the commission of the offense charged, his or her  
25 opinion as to the ability of the defendant to appreciate the wrongfulness of the

1 defendant's conduct or to conform to the requirements of law and, if sufficient  
2 information is available to the physician, psychologist, or expert to reach an opinion,  
3 his or her opinion on whether the defendant needs medication or treatment and  
4 whether the defendant is not competent to refuse medication or treatment ~~for the~~  
5 ~~defendant's mental condition. Testimony concerning the defendant's need for~~  
6 ~~medication or treatment and competence to refuse medication or treatment may not~~  
7 ~~be presented before the jury that is determining the ability of the defendant to~~  
8 ~~appreciate the wrongfulness of his or her conduct or to conform his or her conduct~~  
9 ~~with the requirements of law at the time of the commission of the criminal offense~~  
10 ~~charged. The physician, psychologist, or other expert shall be permitted to make an~~  
11 ~~explanation reasonably serving that reasonably serves to clarify his or her diagnosis~~  
12 and opinion and may be cross-examined as to any matter bearing on his or her  
13 competency or credibility or the validity of his or her diagnosis or opinion.

14 **SECTION 766.** 971.16 (6) of the statutes is renumbered 975.51 (6) and amended  
15 to read:

16 975.51 (6) Nothing in this section shall ~~require the attendance at the trial of~~  
17 ~~any~~ requires a physician, psychologist, or other expert witness to attend the trial for  
18 any purpose other than ~~the giving of~~ to give his or her testimony.

19 **SECTION 767.** 971.165 (title) of the statutes is renumbered 975.52 (title).

20 **SECTION 768.** 971.165 (1) of the statutes is renumbered 975.52 (2), and 975.52

21 (2) (intro.) and (c), as renumbered, are amended to read:

(intro.) 2. and 3.

22 975.52 (2) JOINED WITH A PLEA OF NOT GUILTY (intro.) If a defendant ~~couples joins~~  
23 a plea of not guilty with a plea of not guilty by reason of mental disease or defect, all  
24 of the following apply:

(intra)

1 (c) If both pleas are tried to a jury, that jury shall be the same, except that all  
2 of the following apply:

3 1. If one or more jurors who participated in determining the first plea become  
4 unable to serve, the ~~remaining jurors shall determine the 2nd plea~~ court shall  
5 discharge the jury.

6 2. If the jury is discharged prior to reaching a verdict on the 2nd plea, the  
7 defendant shall not solely on that account be entitled to a redetermination of the first  
8 plea and a different jury of 12 may be selected to determine the 2nd plea only.

9 3. If an appellate court reverses a judgment as to the 2nd plea but not as to the  
10 first plea and remands for further proceedings, or if the ~~trial~~ circuit court vacates the  
11 judgment as to the 2nd plea but not as to the first plea, the 2nd plea may be  
12 determined by a different jury selected for this purpose.

13 **SECTION 769.** 971.165 (2) of the statutes is renumbered 975.52 (3) and amended  
14 to read:

15 975.52 (3) INFORMING JURY OF EFFECT OF VERDICT. If the plea of not guilty by  
16 reason of mental disease or defect is tried to a jury, the court shall inform the jury  
17 that the effect of a verdict of not guilty by reason of mental disease or defect is that,  
18 in lieu of criminal sentence or probation, the defendant will be committed to the  
19 custody of the department of ~~health services~~ and ~~will be~~ placed in an appropriate  
20 institution unless the court determines that the defendant would not pose a danger  
21 to himself or herself or to others if released under conditions ordered by the court.  
22 ~~No A~~ A verdict on the a plea of not guilty by reason of mental disease or defect ~~may be~~  
23 that is tried by a jury is not valid or and may not be received unless agreed to by at  
24 least five-sixths of the jurors.

1           **SECTION 770.** 971.165 (3) (a) of the statutes is renumbered 975.52 (4) (a) and  
2 amended to read:

3           975.52 (4) (a) If a defendant is not found not guilty by reason of mental disease  
4 or defect, the court shall ~~enter~~ grant a judgment of conviction ~~and shall either impose~~  
5 ~~or withhold sentence~~ under s. ~~972.13 (2)~~ 972.28 (1).

6           **SECTION 771.** 971.165 (3) (b) of the statutes is renumbered 975.52 (4) (b) and  
7 amended to read:

8           975.52 (4) (b) If a defendant is found not guilty by reason of mental disease or  
9 defect, the court shall enter a judgment of not guilty by reason of mental disease or  
10 defect. ~~The court shall thereupon and proceed under s. 971.17~~ 975.55. A judgment  
11 ~~entered under this paragraph is interlocutory to the commitment order entered~~  
12 ~~under s. 971.17 and reviewable upon appeal therefrom~~ 975.57 is the final order in  
13 the case and is appealable as a matter of right under s. 808.03 (1). Upon appeal of  
14 the commitment order, all properly preserved issues may be raised, including those  
15 relating to the guilt phase of the trial.

16           **SECTION 772.** 971.17 (title) of the statutes is renumbered 975.57 (title).

17           **SECTION 773.** 971.17 (1) of the statutes is renumbered 975.57 (2), and 975.57  
18 (2) (a) to (d), as renumbered, are amended to read:

19           975.57 (2) (a) *Felonies committed before July 30, 2002.* Except as provided in  
20 par. (c), when a defendant person is found not guilty by reason of mental disease or  
21 ~~mental~~ defect of a felony committed before July 30, 2002, the court shall commit the  
22 person to the department of ~~health services~~ for a specified period not exceeding  
23 two-thirds of the maximum term of imprisonment that could be imposed under s.  
24 973.15 (2) against an offender convicted of the same felony or felonies, including